

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 2, 2010.

[R10-168]

PREAMBLE

- 1. Sections Affected**
R2-5-902
R2-5-904
- Rulemaking Action**
Amend
Repeal
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statute the rule is implementing (specific):**
Authorizing statute: A.R.S. § 41-763(2) and (6)
Implementing statute: A.R.S. § 41-763.04
- 3. The effective date of the rule:**
January 15, 2011
- 4. A list of all previous notices appearing in the *Register* addressing the final rule.**
Notice of Rulemaking Docket Opening: 16 A.A.R. 1471, August 6, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 1442, August 6, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Christine Bronson, Employee Relations Manager
Address: 100 N. 15th Ave., Suite 261
Phoenix, AZ 85007
Telephone: (602) 542-1423
Fax: (602) 542-1980
E-mail: Christine.Bronson@azdoa.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
Laws 2010, 7th Special Session, Ch. 3, repealed Arizona Revised Statutes (A.R.S.) § 41-763.03, voluntary separation program, thus, R2-5-904, Voluntary Separation Program, is being repealed. R2-5-902, Reduction in Force, has been amended to eliminate references to A.R.S. § 41-763.03, R2-5-904, and the term "voluntary separation program," which appeared in the text of the Reduction in Force rule.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The agency did not review any study relevant to the rule.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable

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9. The summary of the economic, small business, and consumer impact:

This rule affects only state agencies and state service employees and will not have a direct impact on small businesses or consumers.

There will be a financial benefit to state agencies, but those benefits cannot be determined until specific situations are addressed.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Minor, non-substantive changes were made between the publication of the notice of proposed rulemaking and this notice of final rulemaking.

11. A summary of the comments made regarding the rule and the agency response to them:

An oral proceeding on the Notice of Proposed Rulemaking published August 6, 2010, was held on September 8, 2010. No one appeared to speak and no comments were received at the oral proceeding.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 9. SEPARATIONS

Section

R2-5-902. Reduction in Force

R2-5-904. ~~Voluntary Separation Program~~ Repealed

ARTICLE 9. SEPARATIONS

R2-5-902. Reduction in Force

A. No change

1. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

2. No change

3. No change

a. No change

b. No change

i. No change

ii. No change

iii. No change

c. No change

d. No change

~~4. An agency head shall submit a proposal for a voluntary separation program in accordance with R2-5-904 at the same time the agency head submits a reduction in force proposal to the Director.~~

~~5.4.~~ An agency head shall submit a proposal that is consistent with A.R.S. §§ ~~41-763.03 and~~ § 41-763.04; and this Section, ~~and R2-5-904.~~

~~6.5.~~ An agency head shall not approve a personnel action that would have an effect on the reduction in force after the

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agency head has submitted a proposal for a reduction in force.

~~7-6.~~ An agency head shall not re-establish a position that was abolished as a result of a reduction in force for two years if the position was filled when the reduction in force occurred, unless the position was abolished due to fiscal constraints, legislative action, or court order.

~~8-7.~~ A permanent status employee separated as a result of a reduction in force is entitled, upon written application, to be considered for reemployment in the class held immediately prior to the separation and for all classes at the same or lower grade for which the former employee is qualified as provided in Article 2 of these rules. The employee shall be given first consideration for reemployment in the agency from which the employee was separated based upon prior seniority and performance.

~~9-8.~~ A permanent status employee reduced in pay grade as a result of a reduction in force is entitled, upon written application, to be considered for repromotion to the class held immediately prior to the reduction in force or any intervening class as provided in Article 2 of these rules.

B. No change

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change

2. No change

3. No change

4. No change

5. No change

6. No change

C. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

D. No change

1. No change

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

3. No change

a. No change

b. No change

E. No change

1. No change

2. No change

3. No change

4. No change

F. No change

1. No change

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

3. No change

a. No change

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- i. No change
- ii. No change
- iii. No change
- b. No change
 - i. No change
 - ii. No change
- 4. No change
- 5. No change
- 6. No change

G. No change

- 1. No change
 - a. No change
 - b. No change
 - c. No change
- 2. No change
- 3. No change
- 4. No change

R2-5-904. Voluntary Separation Program Repealed

~~A.~~ General:

- 1. ~~An agency head shall submit to the Director a proposal for a voluntary separation program for a permanent status employee when submitting a proposal for a reduction in force. The program shall include:~~
 - a. ~~The job classification and position number of each position designated for reduction in force;~~
 - b. ~~The name, Social Security number, current rate of pay, job classification, and position number of:~~
 - i. ~~A permanent status employee in a position scheduled for elimination due to a reduction in force; or~~
 - ii. ~~A permanent status employee in the same class and same designated area of the agency as a position scheduled for elimination due to a reduction in force;~~
 - c. ~~The number of funded, vacant positions within the agency by job classification;~~
 - d. ~~The efforts the agency has made to place employees designated for reduction in force in other positions in the same pay grade within the agency or other state agencies;~~
 - e. ~~The expected outcome of the voluntary separation program;~~
 - f. ~~An available funding statement;~~
 - g. ~~The expected duration of the voluntary separation program;~~
 - h. ~~The benefits the agency plans to provide to each voluntarily separated employee; and~~
 - i. ~~The procedures the agency plans to use to effect the voluntary separation program. These procedures shall include at a minimum:~~
 - i. ~~An agency head's notification to an employee of eligibility to participate in the voluntary separation program within five working days of the agency's receipt of the Director's approval and a copy of the voluntary separation program information about employee eligibility, program duration, severance pay calculation, length of shared insurance premiums extension, method of payment, and program procedures;~~
 - ii. ~~A method of selecting among volunteers for separation when more than one employee is eligible that includes a review process in which the agency head's decision is final;~~
 - iii. ~~A specified time for an employee to consider and accept the voluntary separation severance pay and shared insurance premium payments; and~~
 - iv. ~~A requirement that an eligible employee who volunteers for separation sign a written agreement that the employee agrees to the voluntary separation and that outlines the separation date, amount of payment, length of shared insurance premium payments, exceptions to severance and insurance, method of payment, and information pertinent to any return to work in state service or employment with a contractor who provides services to the state.~~
- 2. ~~An agency shall offer a voluntary separation program to all eligible employees and shall provide, subject to funding availability, severance pay in the amount of one week of pay at current base salary for each year of service, prorated for service in increments of less than one year, and eligibility to continue enrollment in health, dental, and life insurance programs for up to six months after separation if the employee pays the employee contribution.~~
- 3. ~~A permanent status employee in a position or class in an organizational unit or agency operations within a geographic area that is scheduled for elimination due to a reduction in force, or an employee who holds permanent status in the same class in the same designated area of the agency may volunteer for separation and shall receive compensation as provided by the approved voluntary separation program.~~
- 4. ~~An agency head shall submit the agency proposal for the voluntary separation program at least 30 working days before the intended effective date of the proposed reduction in force. If circumstances beyond the agency's control do not permit at least 30 working days' notice, the agency shall provide notice as soon as it is aware of the necessity for~~

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~~a reduction in force.~~

~~5. An agency proposal shall be consistent with A.R.S. § 41-763.03 and this Section.~~

~~B. Administration. Within 20 working days of receipt, the Director shall review and approve or modify an agency's proposed voluntary separation program.~~

~~C. Exceptions. An agency head may offer shorter terms of shared insurance premium payments if funding is not available. An agency head may offer lesser amounts of severance pay if sufficient funds are not available. The program shall not offer shared insurance premium payments to an employee who retires or accepts other employment that offers an employer-sponsored insurance program.~~

~~D. Repayment. An employee shall repay the state any money paid to the employee as a result of participation in the voluntary separation program if the employee returns to state service or applies for retirement or early retirement within six months of the employee's voluntary separation date.~~

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 25, 2010.

[R10-167]

PREAMBLE

1. Sections Affected

R4-21-201

Rulemaking Action

Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-1704(A)

Implementing statute: A.R.S. §§ 32-1722(A)

3. The effective date for the rules:

November 16, 2010

Immediately upon approval by the Governor's Regulatory Review Council pursuant to A.R.S. § 41-1032(A)(4) and (5) as the current rule is unfairly excluding qualified applicants since it is far too stringent and impractical for use. The current rule requires an applicant to submit a score on a national optometry exam taken within five years prior to submission of the application. This is being changed to 10 years. The change will provide a benefit to the public because the Agency will be able to license more qualified doctors, some of whom may potentially work in the underserved areas of the state. This change makes the rule less stringent and will not adversely affect the public health, safety, and welfare or environment. The Board has determined that taking a national exam within 10 years of the application date is sufficient to ensure public safety.

4. List of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 955, June 18, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 952, June 18, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Margaret Whelan

Address: Board of Optometry
1400 W. Washington St., Suite 230
Phoenix, AZ 85007

Telephone: (602) 542-3095

Fax: (602) 542-3093

E-mail: Margaret.whelan@optometry.az.gov

6. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

Notices of Final Rulemaking

The Board is updating its rules to make them more clear, concise, and understandable and consistent with statute and current agency and industry practice. An applicant for licensure by exam currently must take a national optometry board test within five years of applying for licensure. This is being changed to 10 years.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

8. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

9. **The summary of the economic, small business, and consumer impact:**

The rulemaking will have minimal economic impact on the Board, licensees, and applicants. The key changes producing economic impact are:

- a. Changing the time-frame requirement for submission of the National Board exam, allowing optometrists to apply for licensure to the state of Arizona under the exam or endorsement processes.

The minimal economic impact of these changes is outweighed by the public protection benefits resulting from more qualified licensed optometrists being available to consumers of optometry services.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

None

11. **A summary of the comments made regarding the rules and the agency response to them:**

No comments were submitted

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

13. **Incorporations by reference and their location in the rule:**

None

14. **Were these rules previously made as emergency rules?**

No

15. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

ARTICLE 2. LICENSING PROVISIONS

Section

R4-21-201. Licensure by Examination

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure by Examination

- A. An individual is eligible to apply for licensure by examination if the individual graduated from an accredited optometry program but is not eligible for licensure by endorsement under R4-21-202(A).
- B. To apply for licensure by examination, an individual who is eligible under subsection (A) shall submit an application form, which is available from the Board, and provide the following information about the applicant:
1. Full legal name;
 2. Other names ever used, if any, and if applicable, a copy of the court document or marriage license resulting in a name change;
 3. Social Security number;
 4. Mailing address;
 5. E-mail address, if any;
 6. Residential, business, and mobile telephone numbers;
 7. Date and place of birth;
 8. Residential addresses for the past five years;

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9. Educational background including the name and address of, dates of attendance at, and date of graduation from:
 - a. An accredited optometry program,
 - b. A pre-optometric school or undergraduate educational institution,
 - c. High school, and
 - d. Other post-secondary schools attended;
 10. Experience in the practice of the profession of optometry including the business form and location of the practice;
 11. Work experience or occupation, other than the practice of the profession of optometry, for the past five years;
 12. List of the states in which the applicant is professionally licensed including the name of the state, type of professional license, date issued, and expiration date;
 13. List of the states in which the applicant was but no longer is professionally licensed including the name of the state, type of professional license, date issued, and reason the license is no longer valid;
 14. Statement of whether the applicant:
 - a. Has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - b. Has ever been denied an optometric license or renewal in any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - c. Has ever had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric licensing agency and if so, the name of the optometric licensing agency, date, reason for the suspension or revocation, and current status;
 - d. Has ever had an investigation conducted or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and state or jurisdiction, date, reason for the investigation, and current status;
 - e. Has ever had a disciplinary action instituted against the applicant by any optometric licensing agency and if so, the name of the optometric licensing agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
 - f. Has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;
 - g. Has been addicted to narcotic substances or habitually abused alcohol within the last 10 years and if so, date, steps taken to address the addiction or abuse, and current status; and
 - h. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct; and
 15. Dated and sworn signature of the applicant verifying that the information provided is true to the best of the applicant's knowledge, information, and belief.
- C. In addition to submitting the application form required under subsection (B), an applicant shall submit or have submitted on the applicant's behalf:
1. A 2 inch by 3 inch passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of application and signed by the applicant in ink across the lower portion of the front side;
 2. A full set of readable fingerprints taken by a criminal justice agency;
 3. A cashier's check or money order payable to the Arizona Department of Public Safety in the amount required to obtain a state and federal criminal records check;
 4. The application fee required under A.R.S. § 32-1727;
 5. A copy of the scores obtained by the applicant on Parts I, II, and III of the National Board of Examiners in Optometry examination taken less than ~~five~~ 10 years before the date of the application;
 6. A passing score obtained by the applicant on the jurisprudence examination described at R4-21-203;
 7. An official transcript submitted directly to the Board by the educational institution with an accredited optometry program from which the applicant graduated with a degree in optometry;
 8. An official transcript submitted directly to the Board by the educational institution at which the applicant took pre-optometry or undergraduate courses;
 9. A self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of application; and
 10. A copy of the front and back of the cardiopulmonary resuscitation card issued to the applicant or other written documentation of current certification in cardiopulmonary resuscitation.

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TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 4, 2010.

[R10-171]

PREAMBLE

- 1. Sections Affected**
R9-28-508
- Rulemaking Action**
New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 36-2951
Implementing statute: A.R.S. § 36-2951
- 3. The effective date of the rules:**
January 16, 2011
- 4. A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 16 A.A.R. 1176, July 2, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 1126, July 2, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The legislature created A.R.S. § 36-2951 in 2008 to provide requirements for Self-directed Attendant Care (SDAC) services. The Administration is proposing rule language to describe the requirements a person must follow in order to provide or receive SDAC services.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
The Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. Other attendant care options are available to the member in addition to the Self-directed Attendant Care services described in the proposed rule.
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
No additional changes have been made between the proposed rules and the final rules below. The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

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11. A summary of the comments made regarding the rule and the agency response to them:

The Administration received one written comment from the Health and Safety Institute's Mary Schombert suggesting that the Administration add language requiring: SDAC personnel to be certified in first aid, CPR and universal precautions by a nationally recognized organization that requires hands-on evaluation of skills by an authorized instructor, rather than Web-based training.

The Administration's response is: the training requirements are described in AHCCCS' policy manual and address this suggestion. The policy manual clarifies that training requires certification by a nationally recognized organization using in-person training, not Web based training. This policy is communicated to SDAC personnel and the public via the AHCCCS internet site at: <http://www.azahcccs.gov/commercial/default.aspx>.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

A.R.S. § 36-2951(B) required the Administration to submit the proposed rules to the state Board of Nursing for its review and approval. The state Board of Nursing heard and approved the proposed rules on November 20, 2008.

The rules were presented to the Board of Nursing again on July 22, 2010, it was agreed that the approval of the rules remained valid.

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

R9-28-508. ~~Repealed~~ Self-directed Attendant Care (SDAC)

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-508. ~~Repealed~~ Self-directed Attendant Care (SDAC)

A. For purposes of this Article the following terms are defined:

"Competent member" means a person who is oriented, exhibits evidence of logical thought, and can provide directions.

"Fiscal and Employer Agent" or "FEA" is a company specified by the program contractor or the Administration in contract to serve as an employment/payroll processing center for attendant care workers employed by the member to provide SDAC services.

"Medically stable" means the member's skilled-care medical needs are routine and not subject to frequent change because of health issues.

"Personal care" means activities of daily life such as dressing, bathing, eating and mobility.

B. In lieu of receiving other attendant care services a competent member who meets the requirements of A.R.S. § 36-2951 or the member's legal guardian may choose to employ through the FEA a person to provide Self-directed Attendant Care (SDAC) services. A paid caregiver described under R9-28-506 and a parent of a minor child shall not receive reimbursement for SDAC services.

C. The attendant care worker chosen to provide SDAC services does not need to be a registered provider. The attendant care worker shall have, at a minimum, hands-on training in First Aid, CPR, Universal Precautions, and state and federal laws regarding privacy of health information or training of similar efficacy as approved by the Administration.

D. The Administration or Program Contractor shall cover SDAC services only if the member resides in the member's home, and shall not cover SDAC services if the member is institutionalized or residing in an alternative residential setting. If the member has a legal guardian, the legal guardian shall be present when SDAC services are provided.

E. A member who chooses to receive SDAC services is not precluded from receiving medically necessary, cost-effective home health services from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the program contractor.

F. A competent member or legal guardian may employ an SDAC attendant care worker to provide personal care, homemaker

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and general supervision services.

- G.** A competent member, who is medically stable, or the member's legal guardian may employ an attendant care worker to also provide the following skilled services:
1. Bowel care, including suppositories, enemas, manual evacuation, and digital stimulation;
 2. Bladder catheterizations (non-indwelling) that do not require a sterile procedure;
 3. Wound care (non-sterile);
 4. Glucose monitoring;
 5. Glucagon as directed by the health care provider;
 6. Insulin by subcutaneous injection only if the member is not able to self-inject and the attendant care worker uses a sliding scale dosing for insulin;
 7. Permanent gastrostomy tube feeding; and
 8. Additional services requested in writing with the approval of the Director and the Arizona State Board of Nursing.
- H.** The Administration or program contractor shall not cover services under this Section unless:
1. For each SDAC attendant care worker employed by a member or legal guardian, a registered nurse licensed under A.R.S. Title 32, Chapter 15 visits the member and SDAC attendant care worker before a skilled service is provided. The registered nurse will assess, educate, and train the member and SDAC attendant care worker regarding the specific skilled service that the member requires; and
 2. The registered nurse determines in writing that the attendant care worker understands how and demonstrates the skill to perform the processes or procedures required to provide the specific skilled service.

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 30, 2010.

[R10-170]

PREAMBLE

1. Sections Affected

R19-3-201
R19-3-202
R19-3-204
R19-3-205
R19-3-206
R19-3-209
R19-3-210
R19-3-212
R19-3-213
R19-3-214
R19-3-215
R19-3-216
R19-3-217

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 5-504(B)

Implementing statutes: A.R.S. §§ 5-504(I) and (M)(1), 5-505(A)(4), 5-512

3. The effective date of the rules:

November 16, 2010

The Lottery requests an immediate effective date. Under A.R.S. § 41-1032(A)(4), an agency may request an immediate effective date when the rulemaking will provide a benefit to the public and a penalty is not associated with a violation of the rule. The Lottery believes that charitable organizations and the activities they support will benefit from the ability to offer instant tab games at the earliest date possible.

4. A list of all previous notices appearing in the Register addressing the final rules:

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Notice of Rulemaking Docket Opening: 16 A.A.R. 902, June 4, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 1312, July 23, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jeff Hatch-Miller, Executive Director

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4505

Fax: (480) 921-4488

E-mail: JHatch-Miller@azlottery.gov

or

Name: Pam DiNunzio

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4489

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6. An explanation of the rules, including the agency's reason for initiating the rules:

Article 2, Retailers, prescribes the requirements and procedures for Arizona retail businesses that sell Lottery game products. The rules explain common retailer provisions such as: requirements for the sale and payment of Lottery games, retailer conduct including the revocation, suspension or renewal of retailer licenses, hearing procedures, stolen tickets procedures, and Lottery-conducted compliance investigations. Laws 2010, Ch. 126 requires the Lottery to establish an additional special instant ticket game for use by charitable organizations. These rules are being amended to add retailer provisions related to this instant game offering. The rulemaking also makes technical and conforming changes.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The rules for Article 2, Retailers, describe various requirements and procedures for retail businesses to sell Lottery game products. There is no specific conduct this rulemaking is designed to change. These rules are intended to clarify retailer-related provisions due to a new Lottery game offering.

As a result of Laws 2010, Ch. 126, the Lottery is required to establish an additional special instant ticket game for charitable organizations. The Lottery anticipates this rulemaking will primarily impact the agency and Lottery retailers. The Lottery will be offering a new instant game product, but does not expect to incur any additional costs to the agency. Charitable organizations will now have the ability to become licensed Lottery retailers and earn commissions to support charitable activities. Traditional Lottery retailers should experience little or no impact as a result of these rules. The rules are not expected to impact state revenue.

Arizona State Lottery. The Lottery will now offer "instant tab games" as part of the instant ticket product line. Instant tab games are essentially the same as conventional scratch games, except the protective covering is a perforated tab instead of a latex covering. These games will be branded as Arizona Lottery products; retailers will be authorized to sell only tab games provided by the Lottery. Winning tab tickets must be manually verified, similar to the method used to verify scratch tickets before the Lottery automated the validation process. Therefore, R19-3-205(C) adds new language outlining that retailers holding a charitable organization license will not be issued Lottery equipment for sale or redemption purposes. Instant tab tickets are available in a variety of price points, but the Lottery will likely provide games in the \$.25-\$1.00 range, with top prizes ranging from approximately \$25-\$500. Currently, only charitable organizations will be authorized to sell instant tab games. Any decision to expand instant tab games to other retail classifications will likely be the result of an Executive and/or Legislative policy decision. As provided in this

rulemaking under R19-3-213, the Lottery will retain control with respect to the types of products a retailer is permitted to sell.

Costs to the Lottery related to this rulemaking include application/licensing expenses, and the development, printing, and distribution of the instant tab product to a specific group of retailers. These costs are included within the agency's appropriated budget. The Lottery will incur incremental administrative processing costs due to the initial licensing of new retailers. Preliminary estimates indicate the Lottery can expect to license approximately 300-500 new retailers classified as charitable organizations. This cost is included as part of the normal licensing process and expenses will be offset by the license fee received from the applicant.

This rulemaking establishes a new class of retailer license called a "charitable organization license." The previous standard Lottery license will now be known as a "full product license." The full product license provides a retailer with the authority to sell all Lottery products, while the charitable organization license is available only to a charitable organization with the proper tax-exempt status. This distinction is made because certain Lottery licensing requirements, the compliance inspection process, and retailer commission structure will be different depending on the license category.

Unlike traditional retailers, those retailers holding a charitable organization license will receive no Lottery sales representative support and will not be integrated into the Lottery's retailer accounting system. Consequently, the Lottery will not incur administrative accounting/customer service costs, sales representative time and travel costs, or on-line vendor contract costs typically incurred with traditional retailers. The Lottery expects to contract with a distributor who will deliver instant tab tickets, invoice retailers, and remit payment to the Lottery. The distributor must also provide the Lottery with routine reports, including inventory status, orders received, orders shipped, and all related financial information.

The Lottery does not anticipate any new expenses as a result of this rulemaking; all costs will be covered within the existing budget from revenues generated by the product.

Full-Time Employees. The Lottery does not anticipate the need for any additional full-time employees to implement the proposed rules.

Businesses Directly Affected by this Rulemaking. Lottery retailers are the only businesses impacted by the rules. Lottery retailers are also the only small businesses impacted by this rulemaking. A qualifying charitable organization may become a licensed Lottery retailer and sell instant tab games. This rulemaking is expected to benefit these organizations while having little or no impact on the Lottery's traditional retailers, both large and small.

Qualifying charitable organizations that apply for a charitable organization license will have to comply with fewer licensing requirements. These licensees will not have to provide evidence of financial solvency, an authorization agreement for fund transfers, or information relating to pending litigation or judgments. Retailers holding a charitable organization license will remit payments to the Lottery's authorized distributor and the distributor assumes any financial risk.

The instant tab game product provides charitable organizations with the opportunity to generate revenue for their various causes. Initial estimates indicate these retailers as a whole could generate up to \$12 million in sales annually. Charitable organizations will earn 20% on each tab ticket transaction as compared to the regular retailer commission rate of 6.5%. This special rate is available only to qualifying charitable organizations and applies only to the instant tab product. Under traditional instant scratch games, the Lottery distributes funds to beneficiaries designated by the Legislature to receive the funds. Under charitable instant tab games, the charitable organization makes a contribution to its charities from the 20% commission. The higher commission rate will not increase expenditures to the Lottery since this cost is factored into the game structure and will be paid from game proceeds.

In the event of a dispute regarding an instant tab ticket, the Lottery's remedy would be replacement of the disputed ticket with a ticket or tickets of equivalent price from any current game. This is consistent with existing procedures for the Lottery's instant scratch games and on-line games.

These rules are not expected to impact sales potential for traditional Lottery retailers. Conventional retail locations (i.e. grocery chains, convenience stores) are completely different retail environments that are not in direct competition with charitable organizations. Traditional retailers offer the instant scratch product and earn a 6.5% commission on those sales. Traditional retailers are also eligible to receive up to an additional 0.5% commission for meeting performance criteria, while charitable organizations selling only instant tab games will not be entitled to this incentive. In FY10, the Lottery's 2600 retailers earned almost \$37 million in total commissions, with an overall compensation rate of 6.7%.

There are new provisions in the rules that would apply to all retailers, both traditional and charitable. Under R19-3-207(B), retailers are already required to provide access to Lottery personnel during regular business hours to determine if the retailer is complying with regulations. However, unlike existing retailers whose facilities are open to the public, many of the charitable organizations are private clubs that can restrict access based on membership. In R19-3-204(A)(19), denying access to Lottery personnel is an additional reason a retailer's license may be revoked, suspended or denied renewal. This amendment would not alter existing retailers' obligations or the Lottery's potential response to a denial of access. The provision ensures Lottery personnel have a right to access to all retailer premises and serves to protect the interests of the Lottery and the state.

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The Lottery has also amended R19-3-204(D)(1) to include the ability to remove tickets as an emergency action. Because retailers holding a charitable organization license will not be issued an on-line terminal, removing tickets is the only available option if emergency action is warranted. There are other emergency actions that can be implemented with traditional retailers, such as disabling the retailer's on-line terminal, so removing tickets would likely be a rare occurrence. However, the Lottery now has the discretion to use this option for all retailers if there is sufficient cause. This provides greater security control for the Lottery and will not impact any retailer that remains in good standing.

Small Businesses. Charitable organizations are likely to be included in this category. As outlined above, retailers holding a charitable organization license will have reduced licensing requirements, thus simplifying the application process for these small businesses. They will also benefit from a higher commission paid on instant tab products and the overall ability to generate additional revenue.

Consumers and the Public. There are no costs to the general public associated with the adoption of these rules. The public will potentially benefit from activities charitable organizations are able to support as a result of offering instant tab games.

State Revenues. Revenue generated from Lottery game sales and retailer license fees are deposited into the Lottery Fund. In FY10, total game sales were \$551.5 million and approximately \$46,000 was collected in license fees. There may be a moderate to substantial (\$10,000-\$25,000) increase in license revenues due to the addition of charitable organizations as retailers; however, the fees only allow the Lottery to recover the cost of providing the service.

A percentage of Lottery game revenue is typically returned to the state to fund various beneficiary programs as specified in A.R.S. § 5-522. The Lottery returned \$141.9 million to state beneficiaries in FY10 and hopes to exceed that amount in FY11. However, instant tab tickets offer a higher commission than traditional Lottery products, which impacts proceeds that would otherwise be returned to the state. Generating state profit was not the objective of allowing charitable organizations to sell instant tab tickets. Instead, commissions earned will be utilized by these organizations to fund charitable activities. The state will break even, but will not profit from these games.

Alternative Methods. The Lottery believes there are no less intrusive or less costly methods for achieving the purpose of the rulemaking. A statutory mandate has designated the Lottery as the provider of instant tab tickets. In fulfilling this responsibility, the Lottery issued a Request for Proposal to secure a distributor for the instant tab product and will use an existing contract to print instant tab tickets. The formal procurement process ensures fairness to potential vendors and provides the best value to the Lottery and the state. The Lottery will also fulfill its new statutory mandate with existing staff, saving costs associated with additional personnel.

As part of the application process, retailers that qualify for a charitable organization license will have reduced licensing requirements. This alternative minimizes the burden on potential applicants, while still providing the Lottery with sufficient administrative licensing information.

This rulemaking will not have any identifiable economic impact on political subdivisions of the state, the general consumer, or private and public employment.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

In R19-3-201, the definition of "retailer" was expanded to clarify the types of license a retailer may hold. Retailers may hold a full product license, charitable organization license, or both. Throughout the rules, when a Section or subsection applied to a specific license, that license was identified to further clarify the intended audience.

Reference to the Department of Revenue in relation to determining tax-exempt status was removed from the definition of "charitable organization" in R19-3-201 and also from application requirements in R19-3-202(A)(5)(c). Tax-exempt designation is determined by the United States Internal Revenue Service.

The provision requiring a charitable license applicant to operate a premise at least two days per week the majority of the calendar year was removed.

In R19-3-204(A)(20), selling a ticket at greater than face value was added as a reason why a retailer's license may be revoked, suspended, or denied renewal.

In R19-3-212(C), compensation to retailers holding a charitable organization license was clarified to state that commissions are included in the price of instant tab tickets sold to the charitable organization.

In addition, technical, grammatical and clarifying changes were made at the request of Governor's Regulatory Review Council staff. There were no substantive changes between the final rules and the proposed rules.

11. A summary of the comments made regarding the rules and the agency response to them:

No oral or written comments were received regarding the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 2. RETAILERS

Section

R19-3-201.	Definitions
R19-3-202.	Retailer's Application and License
R19-3-204.	Revocation, Suspension, or Renewal Denial of Retailer's License
R19-3-205.	Lottery-issued Equipment
R19-3-206.	Retailer Training
R19-3-209.	Notice and Service
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R19-3-212.	Retailer Compensation
R19-3-213.	Ticket Sales to Players
R19-3-214.	Payments to Lottery
R19-3-215.	Prize Validation and Payment
R19-3-216.	Distribution and Return of Instant Tickets
R19-3-217.	Unaccounted and Stolen <u>Instant Scratch</u> Tickets

ARTICLE 2. RETAILERS

R19-3-201. Definitions

In this Article, unless the context otherwise requires:

1. "Act" means A.R.S. Title 5, Chapter 5, Article 1 of the Arizona Revised Statutes.
2. "Charitable Organization" means an organization including not more than one auxiliary, to which the United States Internal Revenue Service has issued a letter of determination of the organization's tax-exempt status, and the organization has operated for charitable purposes in Arizona for at least two years.
- 2-3. "Controlling agent" means a stockholder, director, officer, managerial employee, or other person directly or indirectly controlling or operating the retailer's business.
4. "Flare" means the board or placard that accompanies each package of instant tab tickets and that has printed on or affixed to it the following information:
 - a. Game name.
 - b. Serial number.
 - c. Ticket count.
 - d. Prize structure, and
 - e. Cost per play.
5. "Instant scratch ticket" means an instant game ticket where the protective covering is made of latex or another substance that is scratched off.
6. "Instant tab ticket" means an instant game ticket where the protective covering is a perforated paper tab that is opened.
7. "License" means:
 - a. "Full product license" means a license to sell any product authorized by the Lottery.
 - b. "Charitable organization license" means a license issued to a qualified charitable organization to sell only instant tab tickets.
- 3-8. "Partial pack of tickets" means less than a complete pack of consecutively numbered and connected tickets. If a pack is broken into individual tickets, each individual ticket is considered a partial pack.
- 4-9. "Premises manager" means the contact representative for a specific premise of a business site or charitable organization.
- 5-10. "Retailer" means a licensed provider of sales and redemptions services for Lottery products. A retailer may hold a full product license, a charitable organization license, or both.
- 6-11. "Ticket" means one or more Lottery game plays.
- 7-12. "Validation" means confirmation of a winning Lottery ticket by Lottery-issued equipment.

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R19-3-202. Retailer's Application and License

A. Application. A person interested in obtaining a license to sell Lottery tickets shall:

1. Submit to the Director a verified application on forms prescribed by the Director containing the following information:
 - a. The applicant's name, and if different, the trade name of the ~~retailer's~~ business premise, address of the physical location of the place of business, the mailing address if different, and phone number;
 - b. The applicant's current transaction privilege tax license number issued under A.R.S. § 42-5005 and federal taxpayer identification number issued by the Internal Revenue Service and recorded on Form W-9;
 - c. Certification that the applicant's business location complies with the Americans with Disabilities Act;
 - d. Marketing and sales information on the forms provided by the Lottery. The information required includes expected volume of sales, number of cash registers, hours of operation, products presently offered for sale, and approximate daily volume of customers entering the place of business;
 - e. Evidence that the applicant's business products or services are not exclusively lottery products or services concerning lotteries;
 - f. Financial relationship and any outstanding debt with the state of Arizona, any of its political subdivisions, or the United States government;
 - g. Evidence that the applicant for a full product license is financially solvent. The evidence may include any one of the following:
 - i. Equity or unencumbered assets in real estate or personal property, other than goodwill and intellectual property, in an amount of \$100,000 or more;
 - ii. Evidence the applicant has established business credit, has a record of meeting its business debts as they became due for the last three consecutive years, and does not have outstanding legal actions, judgments, or tax liens;
 - iii. Personal guarantee in writing of applicant's Lottery account signed by a guarantor and the guarantor's spouse, if community property is being used to guarantee the account, or by the guarantor only, if guarantor provides proof that the guarantee is based on sole and separate property.
 - h. An Electronic Funds Transfer Authorization agreement showing a valid bank account number for the full product applicant from which the Lottery will withdraw any amounts due; and
 - i. Name, case number, court designation, and type of action for any pending litigation or judgments for which the full product applicant may potentially be held financially responsible.
2. If the applicant does business as a sole proprietorship or partnership:
 - a. The name, home address, and home phone number of each owner or partner, including spouse if community property owner, unless applicant provides proof that the business is sole property separate from the community;
 - b. Written authorization and tax identification number for the business entity and Social Security number of each applicant in order to obtain a credit search from a credit reporting agency; and
 - c. A completed authorized fingerprint card for the applicant. If any general partner is a corporation, a fingerprint card is required under subsection (A)(4).
3. If the applicant does business as a limited liability partnership ("LLP") or a limited liability company ("LLC"):
 - a. The name, home address, and home phone number of each partner or member;
 - b. Written authorization and tax identification number to perform a credit search; and
 - c. A completed authorized fingerprint card for each partner or member.
4. If the applicant does business as a corporation:
 - a. The name, corporate address, and corporate phone number of each officer and director, and the name, home address and home phone number of the responsible local premise manager who is the contact representative for the applicant's corporate location in Arizona;
 - b. Written authorization and tax identification number to perform a credit search; and
 - c. A completed authorized fingerprint card for the appropriate responsible local premise manager.
5. If the applicant does business as a charitable organization:
 - a. A copy of the organization charter or formation, documentation of current membership status in the organization, and if applicable, the authorization of the auxiliary;
 - b. The name, home address, and home phone number of each officer and local premise manager, or if an auxiliary, of each officer and local premise manager of the auxiliary;
 - c. A letter of determination issued in the organization's name by the United States Internal Revenue Service verifying the organization's tax-exempt status;
 - d. A completed authorized fingerprint card for each officer and local premise manager, or if an auxiliary, of each officer and local premise manager of the auxiliary; and
 - e. Evidence that the charitable organization has maintained a premise within the state of Arizona for the two years immediately preceding the date of application.
- 5-6. If the Lottery licenses an applicant under subsection (A)(1)(g)(iii), the guarantor shall provide a written authorization

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to perform a credit search. If the guarantee is based on community property, the guarantor and guarantor's spouse shall provide written authorization for the Lottery to perform a credit search.

~~6-7.~~ Submit an application fee of \$45.00 and the following fees, if applicable:

- a. If any individual listed on the personal questionnaire has resided outside the state of Arizona within the last 10 years, a fingerprint fee ~~of \$29~~ per individual as set by the Department of Public Safety.
- b. If the applicant does business as a corporation, limited liability company, limited liability partnership, or a partnership, a credit check fee of \$22.

~~7-8.~~ If the applicant is a business with more than one current licensed location, the application fee for the new location shall be pro-rated at \$1.25 per month from the application date until the date the other licenses are due for renewal under R19-3-202(H)(2)(c).

B. Prerequisites to obtain or renew a license.

1. Evidence that the applicant is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines that the person has committed any act which, if committed by a ~~Lottery-licensed~~ licensed retailer, would be grounds for suspension or revocation of a license granted by the state of Arizona;
2. An applicant, a director or officer of a corporation, ~~or~~ member of a limited liability company, or charitable organization shall not have had a business license required by statute in Arizona or any other state suspended or revoked within the last 12 months;
3. An applicant, a director or officer of a corporation, ~~or~~ member of a limited liability company, or charitable organization shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than ~~ADA noncompliance with the Americans with Disabilities Act~~, and shall not have sold Lottery products without being licensed within one year of the person's date of application;
4. ~~The An~~ applicant for a full product license shall have demonstrated financial solvency based on the information provided in the application, credit search, or pending litigation, if any, or tax liens, if any.

C. The Lottery shall not issue a license to an applicant if any of the following applies:

1. The applicant is a minor, a partnership or LLP in which one of the partners is a minor, an LLC in which one of the members is a minor, or a corporation in which a corporate officer, director, or manager of Lottery sales is a minor;
2. The organization is an adult-oriented business as defined in A.R.S. § 13-1422 or displays sexually explicit material in violation of A.R.S. § 13-3507; ~~or~~
3. The applicant provides deferred presentment services defined in A.R.S. § 6-1251; or
4. The applicant has sold an Arizona Lottery product without a license, or operated gaming machines or equipment that are required to be licensed, without a license.

D. Residency requirement. To obtain a license, an applicant shall be one of the following:

1. A resident of Arizona; or
2. A corporation incorporated in Arizona or authorized to do business in Arizona; or
3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona; or
4. A partnership in which at least one of the general partners resides in Arizona; ~~or~~
5. A limited liability partnership in which at least one of the partners resides in Arizona; or
6. A charitable organization authorized to do business in Arizona.

E. Time-frame for licensure.

1. The Director shall finish an administrative completeness review within 15 days from the date of receipt of the application and fee prescribed in subsection (A).
 - a. The Director shall issue a notice of administrative completeness to the applicant if no deficiencies are found in the application.
 - b. If the application is incomplete or the fee is not submitted, the Director shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 15-day time-frame for completion of the administrative completeness review is suspended from the date the notice of incompleteness is sent until the applicant provides the Director with all missing information.
 - c. If the Director does not provide the applicant with notice regarding administrative completeness, the application shall be deemed complete 15 days after receipt by the Director.
2. An applicant with an incomplete application shall submit all of the missing information within 20 days of service of the notice of incompleteness.
3. If an applicant fails to submit a complete application within the time allowed, the Director shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to this Section.
4. From the date on which the administrative completeness review of an application is finished, the Director shall complete a substantive review of the applicant's qualifications in no more than 75 days.
 - a. If an applicant is found to be ineligible, the Director shall issue a written notice of denial to the applicant.
 - b. If an applicant is found to be eligible for a full product license or a charitable organization license, the Director shall issue a license to the applicant permitting the applicant to engage in business as a ~~Lottery~~ retailer under the

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terms of this Chapter.

- c. If the Director finds deficiencies during the substantive review of an application, the Director shall issue a written request to the applicant for additional information.
 - d. The 75-day time-frame for substantive review is suspended from the date of a written request for additional information until the date that all information is received.
 - e. If the applicant and the Director mutually agree in writing, the 75-day substantive review time-frame may be extended once for no more than 18 days.
5. For the purpose of A.R.S. § 41-1072 et seq., the Director establishes the time-frames for a license to sell Lottery tickets:
- a. Administrative completeness review time-frame: 15 days.
 - b. Substantive review time-frame: 75 days.
 - c. Overall time-frame: 90 days.
6. If the Director does not provide the applicant with written notice granting or denying a license within the overall time-frame, the Director shall refund the applicant's application fee within 30 days after the expiration of the overall time-frame or the time-frame extension.

F. Display of license and point-of-sale material.

1. A license issued under this Chapter shall be signed by the Director or the Director's designated representative. A retailer shall post the license or a copy of the license held by the retailer in a conspicuous place on the premises where the retailer sells Lottery products.
2. A retailer shall prominently display its license, the Americans with Disabilities Act Notice, Arizona Problem Gambling Helpline toll-free telephone number, and the Authorized Retailer Notice.
3. A retailer holding a charitable organization license shall prominently display the flare for each instant tab game currently on sale at or near the point of sale.
- ~~3.4.~~ A violation of this subsection is grounds for disciplinary action according to the provisions of R19-3-204.

G. As a condition of licensure, each retailer shall agree to release, indemnify, defend, and hold harmless, the Lottery, its directors, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery equipment, or terminal operations. This should not be construed in any way to affect the rights of the retailer to recover for losses caused by any third party.

H. Duration and renewal of license.

1. A license issued under this Chapter shall expire three years from the license issuance date by operation of law.
2. A retailer may renew a license to sell Lottery tickets by submitting to the Director a verified application for renewal of the current license on forms prescribed by the Director containing the information required in R19-3-202(A), (B), and (D). By filing an application for renewal, ~~the~~ a retailer holding a full product license authorizes the Lottery to collect a \$45.00 renewal fee by an electronic transfer of funds from the bank account from which the Lottery regularly bills the retailer. A retailer holding a charitable organization license shall submit cash, check, or a money order with its renewal application.
 - a. An application for renewal of a Lottery license received by the Director or deposited in the United States mail postage prepaid on or before the renewal date, shall authorize the retailer to continue to operate ~~as a retailer~~ until actual issuance of the renewal license.
 - b. The Director may refuse to renew a license according to the provisions of R19-3-204.
 - c. A retailer holding more than one license may elect to renew all licenses on the same date. If more than one license is renewed under this subsection, the application fee shall be pro-rated at \$1.25 per month from the license expiration date until the next renewal date of the other licenses held by the same retailer.
3. A license issued under this Chapter that has expired by operation of law for failure to renew may be activated and renewed within one year of its expiration by filing the required application of renewal and payment of the application renewal fee provided for in this Chapter. If a license has been suspended for one or more years for failure to renew, a new application for license must be made and a new license issued according to this Chapter.
4. A license issued under this Chapter is subject to termination by the Director according to the provisions of this Chapter before the expiration date.

R19-3-204. Revocation, Suspension, or Renewal Denial of Retailer's License

A. ~~A retailer's~~ license may be revoked, suspended, or denied renewal by the Director for any of the following reasons:

1. The retailer violates a provision of the laws of the state of Arizona, the United States, or the regulations of the Lottery, which could be punished by jail time or imprisonment, revocation or suspension of a Lottery license, or involves moral turpitude;
2. The retailer offers to sell a Lottery ticket, sells a Lottery ticket or pays a prize on any winning Lottery ticket to a person younger than 21 years old;
3. The retailer sells a Lottery ticket to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security to purchase the Lottery ticket or

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sells a Lottery ticket to a person during the same transaction in which the person uses a public assistance voucher issued by any public entity or an electronic benefits card issued by the Department of Economic Security to purchase any goods in addition to the Lottery ticket;

4. The retailer does not meet the minimum sales requirements or does not follow the guidelines specified in writing by the Director. The Lottery shall provide minimum sales requirements and guidelines to each retailer annually. The Lottery may also post this information on the Lottery's web site for review. The minimum sales requirements and guidelines shall include:
 - a. The formula used to determine the minimum sales requirements and guidelines for the specified time period;
 - b. Resources available to assist retailers in achieving minimum sales requirements and guidelines; and
 - c. The process the Lottery will initiate if a retailer fails to achieve the minimum sales requirements or follow the specified guidelines.
 5. The retailer commits an act that impairs the retailer's reputation for honesty and integrity;
 6. The retailer does not make purchase or redemption of Lottery tickets convenient and readily accessible to the public;
 7. The retailer provides to the Lottery a statement, representation, warranty, or certificate that the Lottery determines is false, incorrect, incomplete, or omits relevant information;
 8. The retailer's actions cause two payments to be returned to the Lottery for insufficient funds in a 12-month period;
 9. The retailer becomes insolvent, unable or unwilling to pay debts, or is declared bankrupt;
 10. The retailer, or an officer, member of the LLC, controlling agent, or local premise manager of the retailer:
 - a. Is convicted of a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, or a crime involving gambling or fraudulent schemes and artifices; or
 - b. Is the subject of a civil order, judgment, or decree of a federal or state authority for misrepresentation, consumer fraud, or any other fraud;
 11. Facts are discovered which, if known at the time the ~~Lottery~~ retailer's license was issued or renewed, would have been grounds to deny licensure;
 12. The retailer adds a minor as an owner, partner, or officer of the business;
 13. The retailer, or an officer, ~~or~~ employee, or agent of the retailer sells a ticket or pays a prize to oneself, to any entity either wholly owned or partially owned by the retailer, or any entity with 10 percent or more of the same shareholders, partners, or members of the LLC as the retailer;
 14. The retailer, or an officer, ~~or~~ employee, or agent of the retailer sells any Lottery product for consideration other than U.S. currency, check, credit card, debit card or, if a player requests, the exchange of a winning Lottery ticket;
 15. The retailer, or an officer, ~~or~~ employee, or agent of the retailer sells a Lottery ticket by telephone, mail, fax, on the ~~Internet~~ internet, or on premises other than the one listed on the ~~Lottery~~ retailer's license;
 16. The retailer, or an officer, ~~or~~ employee, or agent of the retailer sells an altered Lottery ticket, an expired Lottery ticket, or a Lottery ticket after the announced end of the game;
 17. The retailer fails to display the license, Americans with Disabilities Act Notice, Arizona Problem Gambling Helpline toll-free telephone number, or Authorized Retailer Notice, ~~or license~~;
 18. The retailer fails to report a change event defined in R19-3-210; ~~or~~
 19. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws ~~or~~, Lottery regulations, or denies access to Lottery personnel;
 20. The retailer sells a ticket at a price greater than face value;
 21. The retailer holding a charitable organization license fails to prominently display the flare for each instant tab game currently on sale at or near the point of sale; or
 22. The retailer holding a charitable organization license no longer qualifies as a charitable organization or its letter of determination of tax-exempt status is suspended or revoked.
- B.** The Director may on the Director's own motion, and shall on an allegation of a violation of a provision of the laws of the state of Arizona, the regulations of the Lottery, or the written complaint of any person, investigate an act of a retailer within 30 days after receiving the information. The Director may temporarily suspend a license under an emergency action, and impose specific conditions on a retailer during the suspension and commence an action to permanently revoke a license issued under this Article if the retailer is found to have committed an act or omission listed in subsection (A).
- C.** The Lottery shall mail or hand-deliver a notice of action to the retailer to suspend or revoke a license. Written notice to the retailer is effective notice if it is sent or hand-delivered to the address in the application or the last address provided under R19-3-210.
- D.** Emergency action.
1. The Director may disable a retailer's on-line terminal, ~~and~~ suspend sales of Lottery ~~tickets~~ games, ~~or remove tickets~~ if the public welfare is threatened pending a proceeding for revocation, suspension, or denial of renewal, in the following circumstances:
 - a. The retailer's bank account has insufficient funds when the Lottery's regularly-scheduled electronic transfer of the retailer's account is returned by the bank as insufficient funds or closed account and the retailer does not immediately pay the insufficiency;

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- b. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws or Lottery regulations;
 - c. The retailer, or corporate officer, director, partner, LLC member, or premises manager is charged with a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, or a crime involving gambling or fraudulent schemes and artifices.
2. A retailer who receives a Notice of Intent to Revoke a Retailer's License with a finding of emergency action shall:
 - a. Immediately cease all sales of Lottery products, and
 - b. Surrender the ~~retailer's~~ license and all other Lottery property and products upon request by the Director's representative.
 3. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take steps allowed by law to secure payment and return of Lottery products and property.
 4. The Director shall notify the retailer in writing within five days of taking an emergency action that an expedited hearing or informal conference may be obtained before the Office of Administrative Hearings under R2-19-103 and R2-19-110.
- E. Procedure for hearings. A retailer may request a hearing before the Office of Administrative Hearings regarding a revocation, suspension, or license denial. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- F. Procedure for filing an appeal of a final administrative decision:
1. An appeal to the Lottery Commission is deemed an optional motion for rehearing.
 - a. A Notice of Appeal to the Lottery Commission shall be filed within 10 days of receipt of the final administrative decision. The Notice shall contain:
 - i. A copy of the Director's final administrative decision; and
 - ii. The alleged factual or legal error in the final administrative decision from which the appeal is taken.
 - b. A person appealing the decision of the Director may file a written brief stating the position on the appeal within 30 days after receipt of the decision being appealed.
 - c. The Lottery may file a response brief within 15 days after receipt of the appellant's brief.
 - d. The Lottery Commission may rule based on the written briefs, or if requested, may provide for oral argument.
 - e. The Lottery Commission shall make its ruling on the appeal on the record.
 - f. A final decision of the Lottery Commission is subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
 2. A decision of the Director accepting, modifying, or rejecting the recommended decision of the Administrative Law Judge is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- G. Revocation of a ~~retailer's~~ license.
1. A retailer who receives a notice of the final administrative decision revoking the ~~retailer's~~ license shall:
 - a. Immediately cease all sales of Lottery products, and
 - b. Surrender the license and all other Lottery property and products upon request of the Director's representative.
 2. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take all steps allowed by law to secure payment and the return of Lottery products and property.

R19-3-205. Lottery-issued Equipment

A. Retailers holding a charitable organization license will not be issued Lottery equipment to sell or validate Lottery products.

A.B. ~~A retailer~~ Retailers holding a full product license shall only sell or validate Lottery products using authorized Lottery-issued equipment in accordance with the Act and this Chapter.

1. Equipment location. A retailer holding a full product license shall:
 - a. Locate the equipment at a site approved by the Lottery within the ~~retailer's~~ place of business and shall not move the equipment from that site without prior approval from the Lottery.
 - b. Ensure that electrical service to the equipment location is installed according to the specifications established by the Lottery. The retailer holding a full product license shall pay monthly charges for electrical service.
2. Equipment conversion.
 - a. If the Lottery deems it necessary, the Lottery shall modify its on-line or instant gaming system by:
 - i. Changing equipment or accessories; or
 - ii. Converting to another on-line or instant gaming system.
 - b. A retailer holding a full product license shall assist the Lottery to the extent reasonable and practicable to accomplish a modification of the on-line or instant gaming system in a timely and economical fashion.
3. The Lottery shall not be liable for damages of any kind due to interruption or failure of any Lottery-issued equipment.
4. Equipment care. A retailer holding a full product license shall at all times:
 - a. Operate the Lottery-issued equipment and accessories only in the ordinary course of its Lottery business and only according to the requirements established by the Lottery; and
 - b. Exercise diligence and care to prevent failures and malfunctions of, and damage to the equipment and other property of the Lottery, or property of Lottery contractors.

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5. Equipment maintenance. A retailer holding a full product license shall:
 - a. Maintain the Lottery-issued equipment and accessories in a clean and orderly condition;
 - b. Replace paper stock in the equipment as necessary; and
 - c. Minimize equipment downtime by:
 - i. Notifying the Lottery or its contractor immediately of any equipment failure, malfunction, damage, or accident; and
 - ii. Making the equipment available for repair, adjustment, or replacement at all times during the retailer's regular business hours of the retailer holding a full product license.
6. Equipment supplies. A retailer holding a full product license shall:
 - a. Order and use equipment supplies exclusively from the Lottery or its designated contractor. The Lottery shall furnish equipment supplies, at no cost, to the retailer holding a full product license; and
 - b. Maintain a sufficient inventory of Lottery equipment supplies.
- ~~B-C.~~ A retailer Retailers holding a full product license may sell tickets using its authorized Lottery product vending machine in accordance with the Act and this Chapter.
 1. A retailer holding a full product license shall establish safeguards to ensure that Lottery product vending machines are not operated by persons under the legal age to purchase Lottery tickets.
 2. The Lottery product vending machine shall be placed in an area of the store that:
 - a. Is visible to store personnel and players; and
 - b. Is easily accessible to players.
 3. ~~The A~~ retailer holding a full product license shall maintain an adequate supply of instant tickets.

R19-3-206. Retailer Training

- A. A retailer holding a full product license shall participate in training provided by the Lottery in the operation of Lottery equipment and sale of Lottery products, which may take place at a retailer's place of business.
- B. A retailer holding a full product license shall ensure that all employees selling Lottery products or operating Lottery equipment are properly trained in these areas and have access to all materials provided by the Lottery relating to the sales and promotion of Lottery products and the operation of Lottery equipment.
- C. A retailer holding a full product license shall be responsible for:
 1. Any compensation payable to employees for participation in Lottery training courses and instruction; and
 2. All other costs associated with employee training.
- D. A retailer holding a full product license shall provide all employees operating Lottery equipment with copies of the procedures manuals, bulletins, and technical materials furnished to the retailer by the Lottery or its contractors.
- E. A retailer holding a charitable organization license shall ensure that all employees and volunteers selling instant tab tickets have received proper training provided by the Lottery.

R19-3-209. Notice and Service

Service shall be deemed made by the Lottery for any notice, decision, order, subpoena, or other process when the document or a copy is delivered to the retailer, premise manager, guarantor, or the attorney of record, or is deposited as certified mail in the United States Postal Service, addressed to the retailer or guarantor at the address listed on the application for license or as noticed as a change event under R19-3-210.

R19-3-210. Reportable Events

A retailer shall report the following events to the Lottery in writing at least 10 business days before the event or as otherwise specified in this Section:

1. Change in business location;
2. Sale of ownership of the business;
3. Death of a ~~licensed~~ retailer holding a full product license within 10 business days after the death occurs;
4. Addition or removal of a partner in a partnership or a limited liability partnership;
5. Substantial change in ownership of a non-public corporation with unencumbered assets of less than \$100,000 by a transfer of stock (equity) that removes a shareholder that holds 10% or more of a corporation or adds a shareholder that holds 10% or more of a corporation;
6. Merger or acquisition of the licensed entity;
7. Addition or removal of a member in a limited liability company;
8. Addition or removal of a controlling agent, premise manager, or designated corporate contact representative;
9. Divorce or legal separation action filed by an individual retailer holding a full product license, or retailer's spouse, if the licensed entity is a sole proprietorship or a partnership;
10. Retailer or guarantor becomes insolvent;
11. Retailer or guarantor files bankruptcy;
12. Retailer is sued for a monetary judgment;
13. Change in bank account from which the Lottery's electronic funds transfers are made;
14. Change in mailing address or phone number of retailer or guarantor; ~~or~~

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15. The applicant, a director or officer of a corporation, a member of a limited liability company, or a local premise manager is charged with a felony, felony theft designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling; or
16. Revocation, suspension, or other action against a charitable organization's letter of determination of tax-exempt status.

R19-3-212. Retailer Compensation

- A. The Lottery shall pay a retailer holding a full product license commission of six and one-half percent of the price of each Lottery ticket sold. ~~The Lottery shall not pay a retailer a commission on sales transactions that are prohibited by any state or federal statute or rule.~~
- B. In addition to the compensation specified in subsection (A), the Lottery shall pay an incentive of up to one-half percent on the price of each ticket sold ~~to~~ by a retailer holding a full product license who meets specifications established in writing by the Director. The written specifications shall be provided to the retailer holding a full product license before the incentive program begins.
- C. A retailer holding a charitable organization license shall receive a commission of 20 percent of the price of each instant tab ticket purchased as reflected in the price of each instant tab ticket sold to the retailer. This commission rate applies only to instant tab tickets and is in lieu of compensation authorized in subsections (A) and (B).
- D. The Lottery shall not pay a retailer a commission on sales transactions that are prohibited by any state or federal statute or rule.

R19-3-213. Ticket Sales to Players

- A. ~~A Lottery~~ retailer shall sell only the type of Lottery ~~product~~ products authorized by ~~the Lottery~~ its Lottery-issued license.
 1. The Director may require a retailer to sell any one or any combination of Lottery game products based on the retailer's license.
 2. The Director may require a retailer holding a full product license to sell instant tickets as a condition of selling on-line tickets.
- B. A retailer holding a full product license shall only sell or validate Lottery products using authorized Lottery-issued equipment in accordance with the Act and this Chapter.
- C. Other than informing a player of publicly available game odds, a retailer shall not make any representation to a player regarding a likelihood to win, a guaranteed return on a percentage of purchases, or better chances or odds of winning.
- D. On-line tickets.
 1. All on-line ticket sales are final. If a retailer holding a full product license accepts a returned on-line ticket from a player or generates an on-line ticket that is refused by the player and the retailer does not resell the ticket, the Lottery shall deem the on-line ticket to be owned by the retailer.
 2. A retailer holding a full product license shall not devote more than 15 consecutive minutes of sales to an on-line game purchase by any single player if other customers are waiting to make a purchase.
 3. A retailer holding a full product license shall not permit the use of facsimiles or copies of selection slips, or other materials that are not printed or approved by the Lottery. Plays may be entered by using the Lottery equipment touch screen or by using a selection slip provided by the Lottery and hand-marked by the player.
- E. Instant scratch tickets.
 1. All instant scratch ticket sales are final.
 2. ~~The A~~ retailer holding a full product license shall sell instant scratch tickets within each pack in sequential order.
 3. ~~The A~~ retailer holding a full product license shall not sell an instant scratch ticket after the announced end of game.
- F. All instant tab ticket sales are final.

R19-3-214. Payments to Lottery

- A. Money collected from the sale of Lottery tickets by retailers holding a full product license are trust monies required to be collected for the benefit of the state and shall be paid to the Lottery according to subsection (B).
- B. A retailer holding a full product license shall pay for ticket sales in the following manner:
 1. Pay to the Lottery each Friday, by an electronic funds transfer, the amount due from the sale of its Lottery tickets for the seven-day period ending at the close of business on the previous Saturday.
 2. The amount due from a retailer holding a full product license for on-line tickets means the retailer's gross on-line sales revenue, minus any promotional tickets, prize winnings paid out by the retailer, the retailer's sales commission and plus or minus any accounting or prize adjustments.
 3. The amount due from a retailer holding a full product license for instant tickets is based on billing for instant ticket packs issued to a retailer with billing occurring 45 days after a pack is activated, or after 85% of winning tickets in the pack are validated, whichever occurs first, minus any promotional tickets, returned tickets, prize winnings paid out by the retailer, the retailer's sales commission and plus or minus any accounting or prize adjustments.
 4. The retailer holding a full product license shall deposit funds in a timely manner into a bank account from which the electronic funds transfer will be made to the Lottery.
 - a. The retailer holding a full product license shall provide the Lottery with an electronic funds transfer authoriza-

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- tion showing a valid bank account number from which the amounts due the Lottery will be transferred; and
- b. The retailer holding a full product license shall notify the Lottery of any bank account changes within 10 business days before the effective date of the change.

- 5. If ~~a retailer's~~ payment from a retailer holding a full product license is returned to the Lottery for any reason, the retailer shall deliver a certified check, cashier's check, or money order, or make a direct deposit for the amount due to the Lottery's bank account within 24 hours of notification. Additionally, if the retailer's payment is returned to the Lottery:
 - a. The Director may require that the ~~retailer's~~ Lottery equipment at a retailer holding a full product license be disabled;
 - b. The Director may revoke, suspend, or deny renewal of the retailer's license according to R19-3-204;
 - c. The Director may require the payment for instant tickets upon activating the pack for sale; and
 - d. The Director may require the return of the retailer's current inventory of instant tickets and suspend further delivery of instant tickets.

C. A retailer holding a charitable organization license shall pay the Lottery's authorized representative for instant tab tickets.

R19-3-215. Prize Validation and Payment

- A.** A retailer holding a full product license shall provide prize ~~winner~~ validation and payment services for instant scratch tickets or on-line tickets to any Lottery claimant regardless of where the ticket was purchased.
- B.** A retailer holding a full product license shall pay all winning prizes for instant scratch tickets or on-line tickets up to and including \$100, and may pay all winning prizes from \$101 up to and including \$599.
 - 1. A winning instant scratch ticket shall satisfy the validation criteria in R19-3-705 and R19-3-706 and have a proper validation receipt issued by the terminal.
 - 2. A winning on-line ticket shall satisfy the validation criteria in R19-3-406 and R19-3-407 and have a proper validation receipt issued by the terminal.
- C.** A retailer holding a charitable organization license shall pay all winning prizes for tickets sold at its location.
 - 1. A winning instant tab ticket shall satisfy the validation criteria in R19-3-705(A) and R19-3-705(B)(1) through (8), and contain the necessary play, prize, and win symbol captions that enable visual confirmation of a prize.
 - 2. Prizes shall not be paid by the Lottery or by another retailer.

~~C.~~ **D.** Prizes shall be paid by cash, check, money order, or if requested by the player, by Lottery tickets.

R19-3-216. Distribution and Return of Instant Tickets

- A.** The Lottery or its authorized representative shall distribute instant scratch tickets and accept returned instant scratch tickets as follows:
 - 1. Distribute to each retailer holding a full product license the quantity of tickets on which the Lottery and the retailer agree, based on the retailer's anticipated ~~volume of sales~~ volume.
 - 2. Collect full and partial packs of tickets during a game if the Lottery and the retailer holding a full product license determine that the retailer's sales for a specific game are minimal.
 - 3. Collect full and partial packs of tickets when a game is ended. The Lottery shall announce the ending date of a game and communicate this information to all retailers holding a full product license in a timely manner.
 - 4. Credit to the retailer holding a full product license, in the billing period following the receipt of the Lottery-authorized returned tickets, the net dollar value of any unopened full packs and partial packs of tickets.
- B.** The Lottery or its authorized representative shall distribute instant tab tickets and shall not accept returns of instant tab tickets.

R19-3-217. Unaccounted and Stolen Instant Scratch Tickets

- A.** All Lottery tickets issued to a retailer holding a full product license shall be the property of the retailer until their return is acknowledged by the Lottery.
- B.** The retailer holding a full product license shall report stolen Lottery tickets to the local law enforcement agency and the Lottery Investigations unit within one hour from the time the theft occurs or the theft first could have been discovered.
 - 1. The retailer holding a full product license shall provide a copy of the written police report to the Lottery.
 - 2. The retailer holding a full product license shall cooperate in any investigation and prosecution of the theft.
 - 3. The retailer holding a full product license shall sign an affidavit providing the details as known by the retailer.
 - 4. The retailer holding a full product license shall maintain and report current game, pack, and ticket inventory.
- C.** ~~After sustaining~~ If the retailer holding a full product license sustains a loss from stolen tickets, the retailer's insurance is the loss payee.
- D.** ~~If there is~~ If the retailer holding a full product license has insufficient insurance to pay for the retailer's loss and the retailer complies with subsection (B), the Lottery will credit the retailer's account for instant tickets that are stolen as follows:
 - 1. The Lottery shall credit all charges against the ~~retailer's~~ account of the retailer holding a full product license for the stolen tickets if the Lottery determines that the theft was from a source not associated with the retailer or by an unknown party.
 - 2. The Lottery shall credit 50% of the charges against the ~~retailer's~~ account of the retailer holding a full product license

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for the stolen tickets if the Lottery determines that the theft was from an employee, manager, officer, director, or a relative with access to Lottery tickets.

3. Each retailer holding a full product license is limited to no more than two stolen ticket credit requests within any 12-month period.
- E. The Lottery shall not issue a credit for stolen tickets if the Lottery finds that the retailer holding a full product license was negligent or did not enforce reasonable loss-prevention procedures to protect tickets, ticket processing, and ticket accounting.
- F. If a prize claim is made against a ticket that has been reported as stolen or a ticket unaccounted for by the retailer holding a full product license, the Lottery shall hold the prize money in trust pending the findings of an investigation by an appropriate law enforcement agency.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 2, 2010.

[R10-169]

PREAMBLE

1. Sections Affected

Article 13
R20-4-1301
R20-4-1302
R20-4-1303
R20-4-1304
R20-4-1305

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 6-123(2)

Implementing statute: A.R.S. §§ 6-126, 6-991.01, 6-991.02, 6-991.03, 6-991.04, 6-991.07

3. The effective date of the rules:

April 22, 2011, pursuant to A.R.S. § 41-1032(B). This effective date is meant to coincide with the expiration of the second 180 day period of the renewed emergency rules that are in place. The replacement rules will be effective after April 21, 2011, when the renewed emergency rules expire.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 16 A.A.R. 1509, August 13, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 1492, August 13, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Richard Fergus
Address: 2910 N. 44th St., Suite 310
Phoenix, AZ 85018
Telephone: (602) 771-2800
Fax: (602) 381-1225
E-mail: RFergus@azdfi.gov

Secondary Contact:

Name: Lauren W. Kingry
Address: 2910 N. 44th St., Suite 310
Phoenix, AZ 85018

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Telephone: (602) 771-2800
Fax: (602) 381-1225
E-mail: LKingry@azdffi.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

On July 7, 2008, Governor Napolitano signed SB 1028 enacting amendments to existing statutes and adding A.R.S. Title 6, Chapter 9, Article 4 (A.R.S. §§ 6-991 through 6-991.08), creating the licensed profession of loan originator. The provisions of HB 2143 from the 49th Legislature, 1st Regular Session enlarge upon those statutes, and harmonize them with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116, "the S.A.F.E Act"). The new state statutes denote that the fees specified in these new Sections shall be determined by the Superintendent. New Section R20-4-1304 fulfills that mandate.

The rest of the new Sections establish critical elements of the licensing program authorized by SB 1028 and revised by HB 2143. R20-4-1301 states the scope of the new Article of rules for the program. R20-4-1302 outlines the pre-licensure course of study loan originators must complete to be licensed. R20-4-1303 provides the specifics of the statutory financial responsibility requirements that begin with the original application for a license. Finally, R20-4-1305 describes the process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department has not reviewed, and does not propose to rely on, any study as an evaluator or justification for the proposed rules.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Economic Impact Statement for Article 13 "Loan Originators" shows the critical need for these rules to be in place, not only for their monetary benefit but also for their non-monetary benefit. Prior to the adoption of A.R.S. §§ 6-991 - 6-991.22, loan originators were not being licensed and therefore were not being regulated. Adding this license type to those licensed by the Department of Financial Institutions has caused loan originators to be more accountable and knowledgeable, which results in a much greater protection for the public. The statutes were created with the intention of having the Superintendent of the Department fill in some of the blanks with regard to loan originator licensing. This is the only license type of all 18 licenses administered by the Department in which the specific fees were not outlined in statute. The fees decided upon for application, licensure, and maintenance of the license are also the lowest fees of any of the license types, with the exception of motor vehicle dealers. The Department recognized the need to keep these fees low because there is already a requirement for the loan originators to be working for a mortgage banker, consumer lender, or mortgage broker, which must already be licensed by the Department. The Economic Impact Statement shows that the primary benefit is to the consumers who will be working with licensed loan originators. The rules will also greatly benefit the Department because it is required by statute to license loan originators and without the ability to collect fees, there will be no way to cover the expenditures required for administering and regulating over 2,400 licenses.

The rules will also greatly benefit the Department because when the statutes were first established, the Nationwide Mortgage Licensing System (NMLS) did not yet have a system put in place to approve courses for the pre-licensing and continuing education requirements, and at that time the Department of Financial Institutions had to temporarily approve these courses. The new rules shift this burden from the Department and stipulate that the only courses that can be approved by the Department are those which are already approved by NMLS.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

Other than minor grammatical and technical corrections, there were no changes made between the proposed rules and final rules.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency received no public comment on the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

There is no material incorporated by reference in these rules.

14. Was this rule previously made as an emergency rule?

Notice of Emergency Rulemaking: 16 A.A.R. 839, May 21, 2010

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Notice of Emergency Rulemaking: 16 A.A.R. 2165, November 12, 2010

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 13. ~~RESERVED~~ LOAN ORIGINATORS

Section

<u>R20-4-1301.</u>	<u>Scope of Article</u>
<u>R20-4-1302.</u>	<u>Course of Study to Qualify for Licensure</u>
<u>R20-4-1303.</u>	<u>Financial Responsibility</u>
<u>R20-4-1304.</u>	<u>Fees</u>
<u>R20-4-1305.</u>	<u>Practice and Procedure</u>

ARTICLE 13. ~~RESERVED~~ LOAN ORIGINATORS

R20-4-1301. Scope of Article

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

R20-4-1302. Course of Study to Qualify for Licensure

- A.** The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- B.** An applicant for a loan originator license shall satisfactorily complete a course of study by:
1. Attending at least 20 hours of instruction, and
 2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- C.** A pre-licensure course of study shall include 20 hours of instruction in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
 2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;
 3. Non-traditional mortgage product lending standards: Two hours;
 4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: Four hours;
 5. The remaining eight hours should be comprised of instruction in:
 - a. The obligations between principal and agent;
 - b. The statutory and regulatory laws governing loan originators;
 - c. Arithmetical computations common to mortgage lending;
 - d. Principles of real estate lending;
 - e. The purpose and effect of mortgages, deeds of trust, and security agreements;
 - f. The terms and conditions of conforming and non-conforming residential mortgages;
 - g. Real estate appraisal; and
 - h. The principles of appraisal independence.
- D.** A continuing education course of study shall include eight hours of instruction each year in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
 2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
 3. Non-traditional mortgage product lending standards: Two hours;
 4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: One hour.

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

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1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

R20-4-1304. Fees

Loan Originator program fees:

1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): \$350.
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): \$150.
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. §§ 6-126(C)(13) and 6-991.04(G): \$150.
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): \$50.
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): \$50.
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor.
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): \$25 per day after the filing deadline.

R20-4-1305. Practice and Procedure

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).